

ARTICLE SEVEN HARDSHIP RELIEF

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ARTICLE SEVEN

HARDSHIP RELIEF

7.00.00 *GENERALLY*

7.00.01 **Purpose**

The purpose of this Article is to provide mechanisms for obtaining relief from the provisions of this Code where hardship would otherwise occur. Three forms of hardship are addressed: (1) Part 7.01.00 addresses hardship that would be caused if nonconforming development were required to immediately come into compliance with this Code; (2) Part 7.02.00 addresses the hardship that may be caused in particular cases by the imposition of the Code's development design standards; and (3) Part 7.03.00 addresses the hardship that may be caused in particular cases by the Code's land use regulations or resource protection standards.

7.00.02 **Definitions**

Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application.

- A. *Nonconforming Development.*** Development that does not conform to the use regulations in Article Two and/or the development design and improvement standards in Article Five.
- B. *Outdoor Storage Activity*** Land used for the storage, handling, or display of items other than junk.
- C. *Abandoned Structures*** Property that has no apparent signs of current residence due to its unused or derelict condition.
- D. *Uninhabitable Structures*** Property that can not meet federal, state or local housing standards for building and/or health codes due to its wrecked, partially dismantled, and/or unsafe conditions and is deemed to be a public nuisance by proper authorities.
- E. *Junk & Debris*** Shall mean waste material including but not limited to, putrescible

and nonputrescible waste, combustible and noncombustible waste, and generally all material such as paper, cardboard, tin cans, lumber, concrete rubble, glass, bedding, crockery, household furnishings, household appliances, dismantled pieces of motor vehicles or other machinery, rubber tires, rusted metal articles of any kind, wrecked motor vehicles, inoperative motor vehicles, any vehicles of only nominal salvage value, and abandoned or uninhabitable housing.

- D. Commercial Junk Yards.** The outdoor storage of more than four (4) inoperative vehicles.
- E. Inoperative Vehicles** Any vehicle, except agricultural and silvicultural equipment, which can not be legally driven on a public road due to its unsafe or incomplete condition or does not have a current Florida tag.
- F. Verification of Grand fathered Status** Any parcel or structure that is involved in a non-conforming use, may continue if it can be proved that the use has continued uninterrupted prior to and since December 13, 1990. It shall be the owners responsibility to prove uninterrupted activity.

7.01.00 EXISTING NONCONFORMING USE OR STRUCTURE

7.01.01 Continuation of Nonconforming Development

Subject to the provisions below for terminating nonconforming development, such development may, if otherwise lawful and in existence on December 13, 1990, remain in use in its nonconforming state.

7.01.02 Termination of Nonconforming Use or Structure

- A. Generally.** A Nonconforming use or structure must be brought into full compliance with the use regulations in Article Two, and the development design and improvement standards in Article Five of this Code, in conjunction with the following activities:
1. The gross floor area of a grand fathered structure is expanded by more than ten (10) percent, or more than four thousand (4000) square feet, whichever is less.
 2. Expansion of nonconforming use is not permitted.
 3. For the purposes of this Code, structures existing as of December 13, 1990 shall be permitted to be rebuilt in the event of an accident or otherwise improved as long as the gross density or intensity of the property is not increased and the land use

remains consistent with that prior to December 13, 1990. Refer to B. 1.

4. When a nonconforming structure or activity is left unoccupied or which is used temporarily for a conforming activity for twelve (12) months or more.

B. Repair or Reconstruction of Nonconforming Structure.

Only ordinary repairs and maintenance shall be made to a nonconforming structure, unless exempted for the following reasons:

1. If fifty percent (50 %) or less of a nonconforming structure is damaged or destroyed by a fire, flood, windstorm or similar event, the structure may be restored to its original nonconforming condition, provided that a building permit is secured, reconstruction is started within twelve (12) months from the date of the damage, and such reconstruction is diligently pursued to completion. Cost of restoration shall be determined in the manner established by the Building Inspector.
2. If reconstruction is not started within 12 months the situation must be reviewed by the Planning Commission and a special exception may be granted.
3. If more than fifty percent (50%) of a structure is damaged a special exception may be granted by the Planning Commission.

C. Alteration, or Movement of Nonconforming Structure

Except as provided in this Section, a nonconforming structure shall not undergo any substantial improvement and shall not be moved in any manner unless provided below:

1. The movement or alteration itself conforms to the requirements of this code; and/or such action makes the structure conforming.
2. The movement of a nonconforming structure or use in whole or in part to another location results in the structure or use conforming with all requirements for the land use district to which it is moved. The moving of a structure shall also comply with other applicable County regulations.

D. Special Provisions for Specific Nonconformities

1. Stormwater Management Requirements.

Any water supply system or liquid or solid waste disposal facility at the time of the application for a permit is found to be in violation of a Code requirement essential to public health shall be brought into compliance immediately.

2. Parking and Loading Requirements.

Historic structures nominated to the local List of Historic Sites may be granted relief from the provisions of this Code related to parking and loading requirements in order to preserve their historic character. The provisions of Section 7.02.00 shall apply in such cases.

7.01.03 All junk and debris on private property shall be screened or removed to a proper storage facility.

A. *Vegetative Screening*

1. Vegetative screening which will provide a visual opaque block through out the year is the preferred method of screening.
2. A Landscape Standard “C” vegetative screen will be used as the method of Vegetative Screening. (See 2.05.02 G)

B. *Screening for junk and debris*

1. All areas in which junk is to be stored shall be completely enclosed by a screening device with a minimum height of eight (8) feet. The screening device may have no more than two (2) gates, which shall be non-transparent when closed. The screening device may be constructed of vegetation, wood, metal, chain link fencing, masonry, or other similar material, provided the device is designed, constructed, and maintained so as to obscure the view of the junkyard or automobile wrecking yard from the outside. The screening device shall be constructed of the same material and be relatively uniform height or slope along the entire length of a property line; however, different screening devices may be used on different property lines. Except for vegetation, no screening device shall exceed a height of twenty (20) feet.
2. The screening device, except for approved vegetation, shall be set back a minimum of twenty-five (25) feet from a front lot line.

3. In approving a screening device, the Planning Official may, at the request of the applicant, waive the requirement of a screening device along one (1) or more property lines or parts thereof if the Planning Official finds that the view of the interior of the junkyard or automobile wrecking yard will nevertheless be adequately screened from view; such waiver shall, however, always be subject to complete or partial revocation by the Planning Official, upon notice to the property owner, for any change in circumstances which permits the storage of junk to be viewed from the outside. Following such notice, the owner shall submit a plan for a screening device, for consideration by the Planning Official, within thirty (30) days.
4. An applicant for special exception approval shall file with the application a plan for screening devices demonstrating the proposed screening method, the materials to be used, the finish material, and the manner of construction. No such plan may be approved unless it accomplishes the purpose of screening the storage of junk from view, provides for safe and workmanlike construction and presents an exterior finish, which is attractive, not garish or shiny, and non-reflective. In the case of vegetation, the plan shall designate types and varieties of plants, spacing or specific locations, minimum height at planting, and planting technique. Any such device must be planted in accordance with the approved plan, and the required vegetation must be permitted to grow to its natural height and drip lines and must be maintained. Vegetation which dies must be replaced. Vegetation must be planted at a minimum height of four (4) feet and must either reach the required height of eight (8) feet within three (3) years after planting or be replaced with another screening device approved by the Planning Official.
5. Any junk or debris that is not enclosed within prescribed screening must be stored in a proper and legally constructed facility.
6. No junk, vehicles, or other materials may be piled up or stored in any fashion such that the top of such piled or stored material is at an elevation higher than the top of the screening device at its lowest point.
7. Commercial junk yards in existence before July 19, 1990 may be exempt from complete opaque screening as stated in A.1 only for those portions of the property where the topography of the interior cannot be feasibly screened, but all setbacks and other regulations must be observed.
8. All Commercial junk yards must:
 - A. Keep all vehicles in rows
 - B. Keep grass & weeds mowed around vehicles
 - C. Keep all batteries in a separate and safe storage area

- D. Take precautions to insure the environment is not contaminated by oil or other possible contamination by draining, storing and disposing such contaminants by DEP approved procedures.

7.01.06. ENFORCEMENT

Refer to Article Nine, 9.14.00 Code Enforcement.

7.02.00 VARIANCES

7.02.01 Generally

- A. ***Granted by Planning Commission.*** The Planning Commission may grant a variance from the strict application of any provision of this Code, except provisions in Articles Two (Land Use) Section 2.01 and 2.02.01 through 2.02.03 and Three (Concurrency), if the following procedures are adhered to and findings made.
- B. ***Variances to be Considered as Part of Development Review.*** Any person desiring to undertake a development activity not in conformance with this Code may apply for a variance in conjunction with the application for development review. A development activity that might otherwise be approved by the Planning Administrator must be approved by the Planning Commission if a variance is sought. The variance may be reviewed in conjunction with the application for development review, but shall be granted or denied by a separate action prior to the action taken on the associated development application.

7.02.02 Limitations on Granting Variances

- A. ***Initial Determination.*** The Planning Commission shall first determine whether the need for the proposed variance arises out of the physical surroundings, shape, topographical condition, or other physical or environmental conditions that are unique to the specific property involved. If so, the Planning Commission shall make the following required findings based on the granting of the variance for that site alone. If, however, the condition is common to numerous sites so that requests for similar variances are likely to be received, the Planning Commission shall make the required findings based on the cumulative effect of granting the variance to all who may apply.
- B. ***Required Findings.*** The Planning Commission shall not vary the requirements of any provision of this Code unless it makes a positive finding, based on substantial competent evidence, on each of the following:

1. There are practical or economic difficulties in carrying out the strict letter of the regulation.
2. The variance request is not based exclusively upon a desire to reduce the cost of developing the site.
3. The proposed variance will not substantially increase congestion on surrounding public streets; the danger of fire; or other hazards to the public.
4. The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site.
5. The effect of the proposed variance is in harmony with the general intent of this Code and the specific intent of the relevant subject area(s) of the Code.

C. Imposition of Conditions. In granting a development approval involving a variance, the Planning Commission may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to allow a positive finding to be made on any of the foregoing factors, or to minimize the injurious effect of the variance.

7.02.03 Special Provisions Where Variance is Sought to Requirements to Flood Damage Prevention Regulations

A. *Conditions for Modification.* The Planning Commission may permit modifications in the minimum standards of design under the following conditions:

1. Conditions are attached to development permit approval that assure compliance with the requirements of this Code insofar as practical and the modification granted is the minimum modification necessary to make possible a reasonable use of the land; and,
2. The purposes and intent of Section 4.01.01 are observed; and
3. There is no substantial increase in flood hazard or flood damage potential, as certified by a registered Florida professional engineer; and
4. The Planning Department shall maintain the records of all appeal actions, including the technical information.

A. *Additional Finding.* In addition to the findings required by Section 7.02.02(B), the

Planning Commission shall find that the requested variance will not result in an increase in the elevation of the Base Flood, additional threats to public safety, additional public expense, the creation of nuisances, fraud or victimization of the public, or conflicts with other local ordinances except as allowed in 7.02.03 D.

B. *Considerations.* Before granting a variance, the Planning Commission shall consider the provisions of the County Floodplain Ordinance and:

1. The danger that materials may be swept from the site onto other lands.
2. The danger to life and property from flooding or erosion.
3. The potential of the proposed facility and its contents to cause flood damage and the effect of that damage on the owner and the public.
4. The importance of the services provided by the proposed facility to the community, and whether it is a functionally dependent facility.
5. The availability of alternative locations, not subject to flooding and erosion, for the proposed use.
6. The compatibility of the proposed use with existing and anticipated neighboring development.
7. The relationship of the proposed use to the Jefferson County Comprehensive Plan and the floodplain management program for the area.
8. Safe vehicular access to the property in times of flood.
9. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and effects of wave action, if applicable, at the site.
10. The costs of providing governmental services during and after floods including maintenance and repair of public utilities and facilities.

C. *Special Restriction for Regulated Floodways (Aucilla River).* Variances that would increase flood levels during the base flood shall not be issued within the Aucilla River.

D. *Flowage Easement.* No variance that would increase flood damage on other property shall be granted unless flowage easements have been obtained from the owners of all affected properties. In no event shall a variance be granted that would increase the elevation of the base flood more than one (1) foot.

E. Notification. All variances to the flood protection regulations shall:

1. Specify the difference between the flood protection elevation and the elevation to which the structure is to be built.
2. State that the variance will result in increased premium rates for flood insurance on adjoining properties.
3. State that construction below the Official 100-year Flood Elevations increases risks to life and property.

F. Record of Variances to be Maintained. The Planning Official shall maintain a record of all variances including the justification for their issuance and a copy of the notice of the variance. The Director shall report all variances in the Annual Report to the Board of County Commissioners.

G. Historic Sites. Notwithstanding the foregoing requirements, special variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on, or classified as contributing to a district listed on, the National Register of Historic Places, the Florida Master Site File, or the local register of historic places. The special variance shall be the minimum necessary to protect the historic character and design of the structure. No special variance shall be granted if the proposed construction, rehabilitation, or restoration will cause the structure to lose its historical designation.

7.03.00 CLUSTERING

7.03.01 Generally

The purpose of clustering is to allow a developer to use the total density on a parcel and at the same time set aside the maximum amount of land for agriculture, recreation, esthetics, and or to protect sensitive lands. The undeveloped area allows the developer to preserve the rural character of the County while providing open space or Acommon areas@ for the residents to use for community activities. Refer to article 2.04.00. Open space that is to be restricted is provided for in 7.03.02 E.

7.03.02 Procedure

Development of parcels by placing the residential units on small parcels in compact configurations leaving a portion of each parcel exposed to the undeveloped or open space. The following guidelines will be used as a guide for clustering:

A. *Size of Lot.*

1. All clustered lots will be at least one (1) acre in size unless:
 - a. Public water is available, then one half (2) acre lots can be used.
 - b. Public water and provisions are made for a public sewer system or the septic tanks are placed in the common area, then one half (2) acre lots can be used.
2. Not all lots must be the same size or comparable in size. A development can have the density met by using lot size to compliment the character of the land, as long as the total allowable density is not exceeded.

B. *Lot location or situation:*

1. Fifty percent of the total lots must have one side or back adjacent to the open space or shared greenway corridor. That connection to the open space should be at least 1/6 of the total outside girth of the lot.
2. The cluster can be as few as two lots or as many as allowed for the original parcel.

C. *Entrances into the parcel:*

If clustering is used, more than one entrance is allowed, as long as they are over 400 feet apart on state maintained roads and 245 feet for County maintained roads. All lots in a clustered subdivision must have their drives opening onto the subdivision road. When a cluster is done without creating a new road, the drive separation for that road must be followed.

D. *Uses of the open space.*

1. May be retained by the developer or sold to a single individual as long as the development potential is limited to no more than the total for the original parcel. The density restriction must be recorded on the plat as applying to the undeveloped parcel. A landowner can cluster the density of a parcel and retain the undeveloped portion for agricultural use.
2. The open space area shall be included in the boundary of the plat and may become the property of the homeowners association to regulate and use as

they want as long as it is not used for dwellings. Some of the potential uses could be; silviculture, agricultural crops or pasture, nature trails, playgrounds, recreational facilities.

E. Protection of the open space.

Regardless of who owns the open space a conservation easement to the County must be recorded for all uses other than Agriculture, Silviculture, and Recreational uses. This includes anyone who owns the open space whether the homeowners association, the developer, farmer, a single owner or several owners. Any parcel in a clustered subdivision that is larger than the density allowed by the FLUM will have the conservation easement to the County, recorded.